

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

WP(C).No. 26431 of 2007(V)

PETITIONER:

E. MOIDU, ELAMBILAYI HOUSE,
PALLIKUNNU P.O.,
KAMBALAKKAD P.O., WAYANAD.

BY ADV. SRI. SIBY MATHEW
SRI. A. A. MOHAMMED NAZIR

RESPONDENTS:

1. KOTTATHARA GRAMA PANCHAYAT,
KOTTATHARA P.O., WAYANAD, REPRESENTED BY ITS
SECRETARY.
2. THE DIVISIONAL FOREST OFFICER,
SOUTH WAYANAD DIVISION, KALPETTA, WAYANAD.
3. STATE OF KERALA, REPRESENTED BY
THE SECRETARY, LOCAL ADMINISTRATION (G)
DEPARTMENT, SECRETARIAT, TRIVANDRUM.

BY ADV. SRI. RANJITH THAMPAN (SPL.G.P.)
SRI. C. M. SURESH BABU
SRI. A. K. SRINIVASAN
SRI. N. S. MOHAMMED USMAN
SRI. A. S. BENOY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

PIUS C. KURIAKOSE, J.

WPC NO.26431 OF 2007

Dated this the 16TH day of October, 2007

JUDGMENT

The proprietor of a saw mill situated within the area of the first respondent Panchayat has filed this writ petition arraying the Grama Panchayat, the Divisional Forest Officer(South Wayanad Division, Kalpetta, Wayand) and the State of Kerala as respondents 1, 2 and 3 respectively seeking a direction to the first respondent Panchayat to grant renewal of the licence for the saw mill run by him without insisting on a fresh NOC from the Forest Department or from DMO. The petitioner also prays for a declaration that the direction issued by the Hon'ble Supreme Court in the decision reported in **Sri.T.N.Godavarman Thirumulkpad etc. v. Union of India & others (1997 SC 1228)** does not apply to the case of renewal of licence.

2. The petitioner is the proprietor of a saw mill by name Pullikkunnu Wood Industries. On his applying to the Panchayat for licence, the Panchayat directed him to file an application before the 2nd respondent for issuance of NOC for establishment of the saw mill. On receiving that application, the DFO called for report from the Forest Range Officer and issued order directing issuance of NOC. Ext.P1 is a copy of the NOC and

the order directing to issue NOC for establishment of saw mill. It is submitted on the basis of Ext.P1 that the DFO himself inspected the site and found that the proposed site is situated at a distance of 4.5 kms from the nearest vested forest area namely Madakkimala. It is pointed out that the total vested forest area remaining in Madakkimala, is only 4 Hecters after restoring the balance area to previous owner as per the court direction. It is claimed that the President of the first respondent Panchayat also had informed the DFO that the establishment of the mill by the petitioner will not cause pollution or ecological and environmental problems. The petitioner claims to have given an undertaking to the effect that he will not use the saw mill for any illicit activities connected with forest offences and that the NOC straightway can be canceled, if any forest offence is detected and that he will run the mill without causing any disturbance to the public. The petitioner submits that he has already spent Five Lakhs of Rupees for establishment of the mill. The petitioner's application for licence was forwarded by the Panchayat to the DMO, (Health) Wayanad. The DMO under Ext.P2 has approved the site plan for installation of 65 HP electric motor by the petitioner subject to certain conditions. Thereafter, the petitioner was issued with licence and was granted licence for the years 2002 – 2003 up to 2006. Ext.P3 series is copy of the licences so granted to the petitioner. The petitioner claims to have been running the saw mill all these years on the strength of the

above licence. While so, the Panchayat issued Ext.P4 notice to the petitioner alleging that original licence was for instalation of 25 H.P. motor and that the petitioner was using 65 H.P.electric Motor. The petitioner contends that the above allegation is wrong. According to the petitioner, since Ext.P2 itself is in respect of 65 H.P. Motor. The petitioner relies on Ext.P5 clarification from the Industries Department, which is to the effect that NOC from Forest Department is not necessary for renewal of licence for wood based industries except Sandal wood based industries. Meanwhile, the petitioner submitted application for renewal of liecence for the period from 2006 – 2007 to the first respondent Panchayat. On receiving that application, the Panchayat issued Ext.P6 to the petitioner. Under Ext.P6, the petitioner is informed that a fresh NOC from the DFO as well as from the DMO is necessary for renewal of the licence. apart from the site plan. etc. According to the petitioner, his application is not for fresh licenece, but it is only for renewal of licence and fresh NOC is not necessary. The petitioner received further communication from the 2nd respondent DFO (Ext.P7) directing him to obtain fresh NOC from the Forest Department and that if the the petitioner wants a renewal of licence he has to obtain NOC from the Central Empowered Committee. The petitioner submits that the Lokayuktha considered the provisions in the State Government's Order supporting that fresh NOC is necessary every year for renewal of licence for wood based industries. The

Lokayuktha quashed the said provision and the petitioner relies on Ext.P8 news papers report in that regard. The petitioner also relies on the judgment of this court reported in **Varkey George v. State of Kerala (2006 (4) KLT SN 26**) and contends that the insistence of NOC from the Forest Department will not be justified in cases of renewal of existing licence.

2. The Special Government Pleader (Forest) has filed a detailed statement. It is conceded therein that the 2nd respondent had issued NOC for the saw mill as per the order EL-4855/92 dated 7.11.1996. It is pointed out that the petitioner has not renewed Ext.P1 till date. As per G.O.(P) 93/99/Forest dated 15.11.1999 a fresh NOC is necessary every year for renewal of licence if it is situated with the distance of 5 KM from the nearest forest. Annexure R2 (a) is the copy of the above Government Order. It is also stated in the statement on the basis of the Judgment of the Supreme Court in Godavarma's case(supra) the 2nd respondent is not the authority to issue NOC. The Central Empowered Committee has been constituted for monitoring the licence of the new saw mills.

3. The Panchayat has filed a counter affidavit. It is submitted that the petitioner is running the saw mill only upto 31.3.2006 without even paying the licence fee for the year 2006 – 07 and thereafter without taking a licence. The Panchayat has sustained financial loss due to the above

illegal acts of the petitioner. It is further contended that as per the Panchayat Raj Act and Rules the petitioner should have been applied for renewal of licence before one month to the corresponding financial year i.e. during February 2006. The petitioner has not mentioned the date of his application for licence for the year 2006 – 2007. He applied for licence only on 17.7.2006. The said application cannot be treated as an application for renewal. It has to be treated as an application for a fresh opening. It is contended that the Secretary of the Panchayat is not having any power for granting renewal of licence after the expiry of time for applying for renewal. It is also contended that the petitioner will have to comply with all the formalities in applying for a new licence. He will have to be submit the NOC from the Pollution Control Board, from the District Medical Officer and from the concerned Forest Officers. He has not submitted even licence application. What he has submitted is Ext.R1, which is just a letter requesting for renewal.

4. I have heard the submissions of Sri. Siby Mathew, the learned counsel for the petitioner, Sri. Renjith Thampan, the Special Government Pleader for Forest and also those of Sri. A.K.Srinivasan, the learned Standing Counsel for the respondent Panchayat. The submissions of the learned counsel were on the basis of the pleadings of their respective parties. Having considering the submissions in the light of the materials placed on record, I am inclined to accept the case of the Panchayat that

neither Ext.R1 nor the application submitted by the petitioner on 17.7.2006 can be treated an application for issuance of renewal of licence. The application dated 17.7.2006 was obviously filed long after the statutory period during which renewal application is to be submitted. In that view of the matter, the petitioner will have to apply for NOC from the Central Empowered Committee constituted by the Supreme Court. pursuant to the judgment of the Supreme Court in Godavarma's case (supra). The petitioner is granted four months time from today for moving the Central Empowered Committee and for obtaining necessary orders and for producing the same before the Panchayat. The Panchayat will pass orders on the application for licence submitted by the petitioner on 7.7.2006 construing the same as an application for fresh licence on the basis of the orders of the Central Empowered Committee and other materials produced or to be produced by the petitioner.

However, considering the facts and circumstances attending on this case, the respondents are directed to permit the petitioner to maintain status quo as obtaining today regarding his saw mill for a a period of five months from today. Such maintenance of status quo will however be subject to the undertaking of the petitioner that his saw mill will never be used for any illicit activities connected with forest offences and that if any forest offence having anything to do with his saw mill is detected the provisional licence issued to him will be forthwith cancelled. In view of

the above direction, the Panchayat is directed to issue a provisional licence for a period of five months on a condition that the petitioner discharges the entire arrears of licence fee due to the Panchayat and also remits the requisite other charges to the Panchayat.

(PIUS C.KURIAKOSE, JUDGE)

dpk

**PIUS C. KURIAKOSE,
JUDGE.**